

<p>COMBINED COURTS, COSTILLA COUNTY,          COLORADO          Court Address: 304 Main Street, PO Box 301, San Luis, CO          81152</p>	<p>DATE FILED          May 27, 2026 4:53 PM</p>
<p><b>Plaintiff: The People of the State of Colorado</b></p>	<p>Case Number: <b>26CR505</b></p>
<p>vs.</p>	<p>Div.:            Ctrm.:</p>
<p><b>Defendant: Caleb Sanchez</b></p>	
<p>Attorney for Defendant:          Donald F. Cutler, IV          Cutler Law Office, LLC          329 West Highway 50          P.O. Box 743          Salida, Colorado 81201          Phone No.: (719) 539-5017          Fax No.: (719) 539-5018          E-Mail: office@cutlerlaw.org          Atty. Reg. No.: 32739</p>	<p><b>MOTION TO DISMISS – DEFECTIVE INDICTMENT</b></p>

COMES NOW, Caleb Sanchez, by and through defense counsel, to respectfully move to dismiss the Grand Jury's Indictment, as it is substantively flawed.

AS GROUNDS, Mr. Sanchez states as follows:

1. Mr. Sanchez stands charged, along with various co-defendants, via the Twelfth Judicial District Grand Jury's Indictment, dated March 26, 2026.
2. Mr. Sanchez is purportedly charged by Indictment Count 1 with Second Degree Assault, that count offering a statutory definition of second degree assault, a felony offense. However, the substance of the Grand Jury's Count 1 instead alleges the Unlawful Use of Force, a misdemeanor violation of C.R.S. § 18-8-802(1.5).
3. No indictment may be amended as to the substance of the offense charged. C.R.Crim.P. Rule 6.8(b).
4. An indictment may be amended to fix defects, errors or variances of proof, if the change is not substantial or an element of the crime. *People v. James*, 40 P.3d 36 (Colo. App. 2001).
5. The defective indictment here reflects the substance of the charge, but also prejudices Mr. Sanchez in terms of the jeopardy attached, and his procedural

rights, whether the State seeks to proceed upon the allegation of Count 1 as a felony or a misdemeanor.

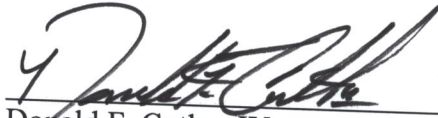
6. The Indictment is defective as to the substance of the charge, depriving Mr. Sanchez sufficient notice to prepare his defenses for trial. *People v. Zupancic*, 192 Colo. 231, 557 P.2d 1195 (1976).
7. The sufficiency of an indictment, as to matters of substance, is a question of jurisdiction. *People v. Garner*, 187 Colo. 294, 530 P.2d 496 (1975).
8. An indictment may be amended upon timely motion as to matters of form, so long as the substance of the charge is not changed, and the defendant is not prejudiced. C.R.Crim.P. Rule 6.8(b), *People v. Thimmes*, 643 P.2d 780 (Colo App. 1981), citing *Marn v. People*, 175 Colo. 242, 486 P.2d 424 (1971).
9. The District Attorney argued that the substance of the Indictment's charge is eligible for amendment, as a matter of form.
10. Here, Mr. Sanchez is deprived the protections of C.R.Crim.P. Rule 6.8, and he would be significantly prejudiced if the Court accepts the District Attorney's argument, that the amendment of a grand jury's charge is a matter of form, given the elemental distinctions of the felony versus the misdemeanor allegations.
11. An indictment that is defective in substance merely prevents prosecution on the basis of that particular pleading; no jeopardy attaches, and the defendant may be charged by any appropriate and sufficient pleading. *Maes v. Dist. Ct.*, 180 Colo. 169, 503 P.2d 621 (1972).
12. The policy underlying this rule [6.8] is to insure that an indictment reflects the will of the grand jury. *People v. Campbell*, 194 Colo. 451, 573 P.2d 557 (1978).
13. The Defendant contends that, pursuant to the clear language of Rule 6.8(b), because this is a defective Indictment, as to the charges found by the grand jury, a matter of substance, it cannot be amended.
14. Mr. Sanchez makes this motion and all motions in this case pursuant to and cites as authority for this motion (and all other motions and objections made during the proceedings in this case, whether or not explicitly stated at the time of the making of the motion or objection) federal and state constitutional rights to due process of the law, the effective assistance of counsel, confrontation, equal protection, trial by jury, compulsory process, the privilege against self-incrimination, the right to appeal of any conviction, protection from *ex post facto* legislation, and protection against cruel & unusual punishment. U.S. CONST. Art. 1 §9, and Amendment 1, IV, V, VI, VIII, IX and XIV; COLO. CONST. Art. II, §§3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28.

WHEREFORE, Mr. Sanchez respectfully moves to dismiss the indictment herein.

Date: May 27, 2026

Respectfully submitted,

CUTLER LAW OFFICE, LLC



Donald F. Cutler, IV  
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this 27<sup>TH</sup> day of May, 2026, delivered a true and correct copy of the foregoing Motion to Dismiss by electronic service via CCE, addressed to:

Anne Kelly, Esq.,  
District Attorney

